

Before the
Federal Communications Commission
Washington, D.C. 20554

-In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 02-49
Table of Allotments,) RM-10220
FM Broadcast Stations.)
)
(Worcester and Westborough, Massachusetts))

NOTICE OF PROPOSED RULE MAKING

Adopted: February 27, 2002;

Released: March 8, 2002

Comment Date: April 29, 2002

Reply Comment Date: May 14, 2002

By the Chief, Allocations, Branch:

1. The Allocations Branch has before it a petition for rule making petition filed by Entercom Boston License, LLC ("petitioner"), licensee of Station WAAF(FM), Channel 297B, Worcester, Massachusetts, proposing the reallotment of Channel 297B from Worcester to Westborough, Massachusetts, as the community's first local aural transmission service. Petitioner also requests the modification of Station WAAF(FM)'s license to specify Westborough as its new community of license. Petitioner states its intention to apply for the channel, if reallotted to Westborough.¹

2. The proposal was filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Westborough is an incorporated town and has a 2000 U.S. Census population of 17,997 persons. Westborough is governed by an elected Board of Selectmen. The town maintains its own police and fire department and provides residents with water and sewer services. Westborough has its own zip code (01581). The town maintains parks and recreation centers, and has its own public

¹ Petitioner holds a construction permit (FCC File No. BPH-1990528II) for operation of Station WAAF(FM) at a different transmitter site. However, petitioner notes that city grade coverage of Westborough will be achieved from both the Station's licensed site and the site specified in the construction permit.

library. Westborough is home to over 100 local businesses and ten religious institutions. It has its own independent school district with three elementary schools, a middle school, and a high school. Westborough has two local newspapers and an official website.

3. The Commission now allows a station to change its community of license despite the presence of pre-1964 and pre-1989 “grandfathered” short-spacings and those permitted under Section 73.215 of the Commission’s Rules. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992); Oceanside and Encinitas, California, 14 FCC Rcd 15302 (1999); and Berlin and Conway, New Hampshire, 14 FCC Rcd 15307 (1999) (pre-1964 “grandfathered” short-spacing); Fremont and Holton, Missouri, 14 FCC Rcd 17108 (1999) (pre-1989 “grandfathered” short-spacing); and Killeen and Cedar Park, Texas, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing). Consistent with that policy, we note that Station WAAF(FM) is a pre-1964 “grandfathered” station that is short-spaced to Stations WMJX(FM), WFNH(FM), WZSH(FM), WFCC(FM) and WXKS(FM). However, since Station WAAF(FM) does not seek to change its transmitter site, no new short-spacing would be created, and no existing short-spacing would be exacerbated, Station WAAF(FM) should be afforded the opportunity to change its community of license. Moreover, both Worcester (population 172,648) and Westborough are located within the Worcester, MA-CT Urbanized Area and the 70 dBu signal will continue to cover 3% of the Boston, MA Urbanized Area, 98% of the Worcester MA-CT Urbanized Area, and 75% of the Fitchburg-Leominster, MA Urbanized Area. Therefore, no Tuck analysis is required.² Additionally, because no change in the transmitter site is requested, no gain and loss area study has to be provided.

4. We believe that the proposal warrants consideration, since the reallocation could provide Westborough, Massachusetts, with its first local aural transmission service, without depriving Worcester of its sole local service.³ An engineering analysis has determined that Channel 297B can be reallocated to Westborough in compliance with the Commission’s minimum distance separation requirements without the imposition of a site restriction at petitioner’s presently licensed site.⁴ Since Westborough is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. As requested, we propose to modify Station WAAF(FM)’s license to specify Channel 297B at Westborough, Massachusetts, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission’s Rules, we shall not accept competing expressions of interest in the use of Channel 297B at Westborough, Massachusetts.

² See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

³ Five AM stations, four non-commercial educational stations, and one FM station would remain licensed to the community.

⁴ The reference coordinates for Channel 297B at Westborough are 42-18-11 North Latitude and 71-53-52 West Longitude.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Worcester, Massachusetts	241B, 297B	241B
Westborough, Massachusetts	---	297B

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before April 29, 2002, and reply comments on or before May 14, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

Elizabeth N. Alexander
Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.

However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.